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NO. 94-413

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STEPHEN A. KNOX, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondents.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES, NATIONAL PARENT TEACHER ASSOCIATION, NATIONAL COALITION AGAINST PORNOGRAPHY, "ENOUGH IS ENOUGH!", CHILDHELP USA, CHILD WELFARE LEAGUE OF AMERICA, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, NATIONAL COUNCIL OF CATHOLIC WOMEN, JUSTICE FOR CHILDREN, THE LUTHERAN CHURCH -MISSOURI SYNOD, RABBINICAL ALLIANCE OF AMERICA, WOMEN AGAINST PORNOGRAPHY, FOCUS ON THE FAMILY, FAMILY VIOLENCE & SEXUAL ASSAULT INSTITUTE, FAMILY RESEARCH COUNCIL, INC., CHRISTIAN LIFE COMMISSION-SOUTHERN BAPTIST CONVENTION, CHRISTIAN ACTION NETWORK, "HURT", COALITIONS FOR AMERICA, FREE CONGRESS RESEARCH & EDUCATION FOUND., SAVE AMERICA'S YOUTH, CITIZENS AGAINST PORNOGRAPHY, TRADITIONAL VALUES COALITION, CHRISTIAN LEGAL DEFENSE AND EDUCATION FOUNDATION, VOICES FOR VICTIMS, CHILD PROTECTION LOBBY, NAT'L ALLIANCE FOR FAMILY COURT JUSTICE, ENDING MEN'S VIOLENCE NETWORK, EAGLE FORUM, CHRISTIAN COALITION, NAT'L CENTER FOR REDRESS OF INCEST & SEXUAL ABUSE, AMERICAN COALITION FOR ABUSE AWARENESS, VOICES IN ACTION, INC. AS *AMICI CURIAE* OPPOSING CERTIORARI.

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INTEREST OF THE AMICI CURIAE*

Amici comprise a broad, non-partisan collection of public interest groups whose membership include the survivors of childhood sexual abuse and professionals who expend considerable energy advocating legal and social reforms to protect children. The National Law Center for Children and Families acted as counsel for *Amici* when this case was previously before the Court and on remand to the United States Court of Appeals for the Third Circuit. All *Amici* agree the decision of the Court below provides a much-needed measure of protection to children. For the Court's convenience, Appendix B contains a full description of all *Amici*.

COUNTERSTATEMENT OF QUESTION PRESENTED

Must there be nudity or genital visibility in order for a child's genitalia to be exhibited lasciviously in contravention of 18 U.S.C. Section 2256(2)(E) where Section 2256(2)(E) does not contain a nudity or visibility requirement on its face and where Congress in fact deleted a nudity requirement?

SUMMARY OF THE ARGUMENT

Section 2256(2)(E), on its face, broadly prohibits all lascivious exhibitions of children's genitalia. This case thus presents a straightforward question of statutory interpretation. Because Section 2256(2)(E) is clearly and unambiguously worded there is no need to resort to legislative history. *National Org. for Women v. Scheidler*, 114 S. Ct. 798, 806 (1994).

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* This brief is submitted with the written consent of both parties, filed with the clerk of this Court.

The videotapes at issue violate Section 2256(2)(E) because they depict scantily-clad minor females in unnatural, sexual postures and extended close-up vignettes of their genitalia. Moreover, the advertising literature accompanying these videotapes describes the children depicted as alluring and sexually inviting. In fact, Petitioner does not seriously dispute the lascivious character of the Nather Tapes.

Instead, Petitioner advocates an unjustifiably narrow interpretation of the word "exhibition." According to Petitioner, if a close-up vignette lingeringly displays a child's clothed genitalia, only the clothing is exhibited.

The Third Circuit correctly rejected this interpretation because it does not comport with common sense, the plain meaning of Section 2256(2)(E), or Congress' manifest purpose in enacting laws against the receipt of child pornography. Contrary to Petitioner's assertion, under the ordinary meaning of "exhibition," in the previously mentioned vignette, both the clothing *and* the genitalia are exhibited.

Finally, there are strong policy reasons for refusing to review the Third Circuit's opinion. If Section 2256(2)(E) is interpreted any differently, a new genre of child pornography will become commercially viable. A newly legitimate market for "backdoor child porn" would necessarily victimize vulnerable children. This would clearly fly in the face of Section 2256(2)(E).

ARGUMENT

I. THE NATHER TAPES CONTAIN "EXHIBITIONS" OF THE GENITALIA OF CHILDREN.

A. The Plain Meaning of "Exhibit" Does Not Presuppose Nudity or Genital Visibility.

The term "exhibition" is not statutorily defined. The Third Circuit appropriately gave the term its common and ordinary meaning. Pet. for Cert. at PA 25-26; *see Smith v. United States*, 113 S. Ct. 2050, 2054 (1993). Webster's Dictionary defines "exhibit" as "to present or expose to view; show; display... put on display in order to attract notice." Webster's New World Dictionary at 476 (3d ed. 1991).

Petitioner's reading of the history of the phrase "lascivious exhibition" misapprehends and misconstrues Congressional intent. As this Court has long held, it is appropriate to conclude that the ordinary meaning of the term "exhibit" reflects Congressional intent. *See Richards v. United States*, 369 U.S. 1, 9 (1962); *see also American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982). To support his strained interpretation of Section 2256(2)(E), Petitioner cites witness statements and a Department of Justice letter addressing a prior version of the bill which would become Section 2256(E)(2) to conclude nudity is a prerequisite to criminal liability under Section 2256(2)(E). Only one of these statements, however, is attributable to a Member of Congress and that statement was made in 1986, well after the 1977 legislation had been enacted. A passing reference to a law that has been on the books for ten years does not, indeed cannot, amount to a statement of Congressional intent. *See Blanchette v. Connecticut Gen. Ins. Corp.*, 419 U.S. 102 (1974).

A letter from Assistant Attorney General Wald (upon which Petitioner heavily relies) criticized and recommended changes to a previous and discarded version of Section 2256(2)(E). That the discarded version would have employed the limiting term "nudity" supports *Amici's* conclusion that Congress did *not* intend to confine the statute's coverage to nude exhibitions. According to well established canons of statutory construction, when Congress rejects one proposed statutory formulation in favor of another one, it is presumed that Congress has intentionally rejected the discarded formulation. *See Russello v. United States*, 464 U.S. 16, 23-24 (1983).

Thus when Congress rejected language which would have limited "lascivious exhibition" to exhibitions of nudity in favor of legislation which criminalized *every* "lascivious exhibition," Congress deliberately rejected a nudity requirement. Not only is Petitioner attempting to read a nudity requirement into a statute which has none, he is attempting to re-insert a nudity requirement that Congress intentionally deleted. The Third Circuit correctly refused Petitioner's invitation to "re-write" Section 2256(2)(E).

In short, Petitioner's analysis of the legislative history of Section 2256(2)(E) only demonstrates that Congress chose not to classify mere depictions of child nudity as child pornography. But that is beside the point because the application of Section 2256(2)(E) to nudity without more is not at issue here. In fact, the legislative history neither states nor suggests that nudity is a *sine qua non* for a lascivious exhibition.

B. The Nather Tapes Exhibit Children's Genitalia in Order to Attract Attention.

As the Third Circuit held, the Nather Tapes unquestionably exhibit the genitalia of minor females. Pet. for Cert. at PA 30. While this section discusses only a portion of the tapes, it is representative of their contents as a whole. The following review clearly reinforces the Third Circuit's conclusion that the Nather Tapes include lascivious exhibitions of children's genitalia.

Nather Tape Two ("Nath. 2") opens with images of an adolescent female striking suggestive poses and responding to off-camera directions. Nath. 2 at 1:00-1:48 (Government's Exhibit 6; R.59, 60). While the female is posing, the cameraman focuses in upon her pubic area a number of times. *Id*. Later in Nath. 2, the cameraman centers in on the panties of another early adolescent female. *Id*. at 4:40 & 6:14 & 6:54.

At one point in Nath. 2, an adolescent female says to someone off-camera, "I don't know what to do." Nath. 2 at 8:50. An off-camera voice asks her to push her knees up. *Id*. The female complies and the camera focuses directly on her panties. *Id*. Another off-camera voice then exclaims, "We love it." *Id*.

Also in Nath. 2, a pre-teen female is videotaped in a tree holding a squirming younger female. Nath. 2 at 26:46. The cameraman focuses on the panties of the older child numerous times. The younger child remarks, "My friend did a video and she got five dollars." *Id*. at 29:35.

Later in Nath. 2, a bikini-clad female hangs upside down and her bikini top falls down exposing her nipple. Nath. 2 at 33:34. The cameraman quickly focuses in on the exposed

nipple. *Id.* The cameraman also shoots close-ups of the female's pubic area numerous times. *Id.*

Nather Tape Three ("Nath. 3") opens with an extended close-up shot of a female's genital area. Nath. 3 at 1:00-3:00 (Government's Exhibit 7; R.59, 60). Later in Nath. 3, a female is instructed by an off-camera voice to "pull your pantyhose down." Nath. 3 at 38:00. The female complies and the cameraman focuses on her garter as well as her pubic area. *Id.*

It is absolutely clear from this review of Nath. 2 and Nath. 3 that the genitalia of the children depicted therein are "put on display in order to attract notice." *Accord United States v. Wolf*, 870 F.2d 241, 243-44 (10th Cir. 1989) (ruling that child's genitalia lasciviously exhibited despite the fact that child was sleeping in photograph). The Third Circuit's conclusion that the Nather Tapes "exhibit" the genitalia of minors within the meaning of Section 2256(2)(E) is sound. *Cf. People v. Walcher*, 515 N.E.2d 319, 323 (Ill. 1987)(upholding a state child pornography conviction where the genitals of minor female were "exhibited or displayed ... *albeit* in a somewhat obscured manner")(emphasis in original).

II. THE CHILDREN'S GENITALIA IN THE NATHER TAPES ARE EXHIBITED LASCIVIOUSLY.

A. Lasciviousness Under Section 2256(2)(E) Must Be Determined From the Perspective of Child Pornography Consumers.

As the Third Circuit twice recognized, determining what exhibitions are "lascivious" necessitates an inquiry into the intended effect of a given exhibition. Pet. for Cert. at PA 29-30; *United States v. Knox*, 977 F.2d 815, 823 (3d Cir. 1992)

("Whether a depiction is lascivious is essentially a *subjective inquiry* into whether or not the material is intended to elicit a sexual response from the viewer")(emphasis added). This is entirely consistent with precedent. *See United States v. Villard*, 885 F.2d 117 (3d Cir. 1989); *see also United States v. Dost*, 636 F. Supp. 828, 831 (S.D. Cal. 1986)(articulating six-part test), *aff'd sub nom. United States v. Weigand*, 812 F.2d 1239 (9th Cir.), *cert. denied*, 484 U.S. 856 (1987); *United States v. Cross*, 928 F.2d 1030 (11th Cir.), *cert. denied*, 112 S.Ct. 594 (1991), *and cert. denied*, 112 S.Ct. 941 (1992). The Ninth Circuit noted in *Weigand* that the term "lascivious" as used in Section 2256 should be defined within a "social, cultural, and moral context." *Weigand*, 812 F.2d at 1244. The *Weigand* Court explicitly observed that lasciviousness for Section 2256 purposes is a characteristic "of the exhibition [or the visual depiction] which the photographer sets up for himself or like-minded pedophiles." *Id*; *see also United States v. Arvin*, 900 F.2d 1385, 1391 (9th Cir. 1990) (holding that "motive of photographer" is a factor in lasciviousness determination), *cert. denied*, 498 U.S. 1024 (1991).

Moreover, this Court has consistently held that the manner in which sexually explicit material is marketed is relevant to determining whether the material is intended to engender sexual responses. *See Pinkus v. United States*, 436 U.S. 293, 303 (1978). *Pinkus* stands for the common sense proposition that the trier of fact in an obscenity prosecution may consider the subjective intent of the seller and purchaser.

When passing on the question of obscenity *rel non.* that proposition is obviously applicable to child pornography and Section 2256(2)(E). If triers of fact cannot consider such evidence, child pornographers could create visual depictions of children unquestionably calculated to activate pedophilic

desires and yet escape criminal liability. Just as in the case of obscene pornography, triers of fact need not be limited to examining only the "four corners" of videotapes or pictures when attempting to determine whether a particular exhibition is calculated to engender an unhealthy interest in sex with children in child pornography prosecutions.

B. From the Perspective of Pedophiles, the Exhibitions of Children's Genitalia in the Nather Tapes are Lascivious.

In this case, the "Nather Notes," the promotional material seized from Petitioner's residence, strongly supports the conclusion that the Nather Tapes violate Section 2256(2)(E). One advertisement reads: "We do not have any filler material in these videos. . . . Every second is crammed with tender young girls in various revealing outfits." Nather Notes, (February 1990), at Government's Exhibit 4 (R.50, 60). Another promotional release reads, "We have some nice close-ups of the panties she's wearing under those shorts, too," and, "[t]hen, just as you are recovering from all of the above, we bombard you with some nice teen and pre-teen panty close-ups." Nather Notes, (April 1990), at Government's Exhibit 4. Yet another advertisement reads "she is a tease and erotic beyond belief and our famous close-ups are absolutely savage." *Id.* The Nather Company produced a tape entitled *Early Adolescence* and promoted it as an "answer to the many requests we had been receiving for tapes that had almost exclusively candid panty shots." Nather Catalogue, p. 3, at Government's Exhibit 4. In the Nather Catalogue, a tape entitled "*Lollipops*" is touted as containing, "scenes of a thirteen year old in a leopard skin bikini with a magnificent ass that she *puts on display* for you as she walks back and forth slowly and teasingly." Nather Cat., p. 2, at Government's Exhibit 4 (emphasis added).

These quotations are important because they enable the Court to see the Nather Tapes through the eyes of a pedophile. With the Nather Tapes as an aid, it is unambiguously clear that there is more to the videotapes than innocent images of children which coincidentally arouse child pornography consumers. As the Third Circuit correctly held, the "more" is what distinguishes the Nather Tapes as a species of child pornography.

III. UNDER THE TEST SET FORTH IN *UNITED STATES V. DOST*, THE NATHER TAPES VIOLATE THE LETTER AND INTENT OF SECTION 2256(2)(E).

In upholding Petitioner's conviction, the Third Circuit employed the six-factor *Dost* test. *See* 636 F. Supp. at 831; *see also United States v. Villard*, 885 F.2d 117, 122 (3d Cir. 1989) (formally adopting *Dost* test). This test examines six factors which determine whether a given exhibition is lascivious. Briefly, the six-factor *Dost* test asks:

(1) whether the focal point of the depiction is on the genitalia or pubic area;
(2) whether the visual depictions contain children posed in a sexually suggestive manner or located in a place associated with sexual activity;
(3) whether considering the age of the child, the child is depicted in an unnatural pose or in inappropriate attire;
(4) whether the child is fully clothed, partially clothed, or nude;
(5) whether the depiction suggests coyness or a willingness to engage in sexual activity;
(6) whether the depiction is intended to arouse a sexual response.

Knox, 977 F.2d at 822. No single factor is dispositive. *Id.* at 823.

This Court's decision in *New York v. Ferber*, 458 U.S. 747 (1982), aids in the application of the six *Dost* factors. While articulating the constitutional test for child pornography and distinguishing it from the test for obscenity, this Court held that sexually explicit visual depictions of children need not be "considered as a whole." *Ferber*, 458 U.S. at 764.

Accordingly, a single image intended to engender pedophilic lust is sufficient to establish lasciviousness, notwithstanding a barrage of non-lascivious images contained in the same videocassette. The presence of one depiction in the Nather Tapes which satisfy some or all of the *Dost* factors is therefore sufficient to support a finding of lasciviousness. Similarly, the presence of various images, each satisfying a single *Dost* factor, may be considered together when making a lasciviousness determination.

A. The Nather Tapes Graphically Focus on the Genitalia of the Subjects.

As previously discussed and set forth in Appendix A, Nath. 2 and Nath. 3 continually focus on the genitalia of the subjects. Indeed, the entire purpose of both tapes was to provide pedophiles with sexually arousing images of young girls. *See, e.g.*, Nather Notes, (February 1990) at Government's Exhibit 4. There can be little doubt that the Nather Tapes satisfy the first *Dost* factor.

B. For Pedophiles, the Nather Tapes Display Children in Eroticized Settings.

Because lasciviousness should be examined in the context of pedophile voyeurs, this Court should consider visual images of young girls in playgrounds, schools, and

swimming pools as a child pornography consumer would. *See, e.g.*, Nath. 2 at 33:34 (female in playground). Pedophiles associate these settings with children, whom, to pedophiles, are nothing more than highly eroticized sexual objects. *Cf.* K. Lanning, *Child Molesters: A Behavioral Analysis* 26-27 (3d. ed. 1992) (documenting erotic interest of pedophiles in objects associated with children). It follows as a matter of course that child pornography consumers associate such settings with sex with children.

C. The Children Depicted in the Nather Tapes Are Unnaturally Posed.

At one point in Nath. 2, a young girl states that she does not know how to pose. Nath. 2 at 8:50. She is instructed to position herself so that the camera can focus on her panties. *Id.* This incident reveals that the subject was too young to comprehend what was happening; her poses should therefore be considered unnatural. Obviously, were her poses natural, she would have known how to position herself without instruction.

D. Many of the Children Depicted in the Nather Tapes are Partially Clothed.

Most of the young girls in Nath. 2 and Nath. 3 are depicted in bathing suits or other forms of "abbreviated attire." Pet. for Cert. at PA 25. As discussed above, Congress explicitly chose not to require nudity as a prerequisite to criminal liability under Section 2256. It is also appropriate to consider visual depictions of scantily clad torsos and genitalia, as in the Nath. 2 and Nath. 3, as evidence of an intent to arouse sexual feelings toward children.

E. The Nather Tapes Display Children in a Manner Suggesting Coyness and a Willingness to Engage in Sexual Activities.

At one point in Nath. 2, a child, responding to off-camera directions, pulls a strap down and over her shoulder and gazes at the camera seductively. Nath. 2 at 11:10. The sexual overtones of this image are undeniable. Petitioner cannot credibly contend that this image is in any way non-sexual or innocent.

F. The Nather Tapes Are Intended to Elicit Sexual Responses.

Both Nath. 2 and Nath. 3 contain visual images of scantily-clad girls in suggestive poses. In view of the graphic way in which these videotapes were advertised, it is clear that they were intended to arouse pedophilic sexual desires. Given the tendency of pedophiles to be aroused by non-explicit images of children, the conclusion that the Nather Tapes were intended to appeal to pedophilic interest in sex is unavoidable.

IV. ADOPTING EITHER PARTY'S CONSTRUCTION OF "LASCIVIOUS EXHIBITION" WILL CREATE AND SUPPORT AN OPEN MARKET FOR SEXUALLY SUGGESTIVE DEPICTIONS OF CHILDREN.

A. All Types of Child Pornography, Including the Nather Tapes, Are Directly Linked to Child Sexual Abuse.

The Third Circuit's decision provides a much-needed measure of protection for children. It is indisputable that the sexual abuse of children is often precipitated by child

pornography.[1] *See The Effects of Pornography on Women and Children: Hearings Before the Senate Subcomm. of Juvenile Justice of the Comm. on the Judiciary*, 98th Cong., 2d Sess. 136-139 (1984) (testimony of John Rabun, for the National Center for Missing and Exploited Children) (Committee Serial No. J-98-133); *see also* Ralph W. Bennett, *The Relationship Between Pornography and Extrafamilial Child Sexual Abuse*, The Police Chief, Feb. 1991, at 19; Perm. Subcomm. on Investigations, *Child Pornography and Pedophilia*, S. Rep. No. 537, 99th Cong., 2d Sess. 9 (1986). *See generally* Donnelly, *Protection of Children from Use in Pornography*, 12 J. Law Reform 295 (1979) (comprehensive discussion of the correlation between child pornography and child sexual abuse). Child pornography, thus plays a central role in the sexual abuse of children, justifying pedophilic conduct and assisting pedophiles in seducing children. *See* W. Marshall, *Use of Sexually Explicit Stimuli by Rapists, Child Molesters and Non-offenders*, 25 J. Sex Res. 267-288 (1988). "Backdoor child porn" presents precisely this danger. This Court has recognized the relationship between child pornography and sexual abuse on two separate occasions and concluded on both occasions that child pornography's link to molestation centers upon the government's broad power to prohibit child pornography.

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[1] Scientific studies have demonstrated that repeated exposure to sexually explicit material involving children is directly linked to child sexual abuse. *See, e.g.*, Erickson, *Behavior Patterns of Child Molesters*, 17 Archives Sexual Behav. 77-78 (Feb. 1988) (reporting that large numbers of child molesters use sexually suggestive pictures of children to lower the inhibitions of their victims). And to compound matters, there is a demonstrable link between sexual abuse as a child and criminal behavior as an adult. A. Burgess, *Abused to Abuser: Antecedents of Socially Deviant Behavior*, 144 Am. J. Psychiatry 1431-36 (Nov. 1987); S. Rep. No. 537 at 8 n.27 & 28.

Ferber, 458 U.S. at 759-60; *Osborne v. Ohio*, 495 U.S. 103, 110 (1990); *see generally* S. Rep. No. 537 at 6.

B. Reversing Petitioner's Conviction Will Legitimize the "Backdoor Child Pornography" Market.

In its March and April 1990 "Nather Notes," the Nather Company boasts that its videos "featuring teen and pre-teen girls have proven so popular that not only have they been widely pirated in this country and abroad, *they have also, recently, spurned [sic.] quite a few competitors.*" Nather Notes, (March 1990, April 1990) at Government's Exhibit 4 (emphasis added). It is clear from this advertisement that a large market already exists for "backdoor child porn." In the words of one recognized expert, "[n]o matter how adequate the laws are, how aggressively they may be enforced by police, prosecutors, and the courts...there will always be adults who are anxious to sexually exploit children." Shirley O'Brien, *Child Pornography* 301 (1983) If "backdoor child porn" is de-criminalized and sold openly, the number of consumers will expand.

Petitioner's actions helped to fuel the market for "backdoor child *porn*." He purchased the Nather Tapes, sending a strong message to the Nather Company to continue producing similar videotapes. The Third Circuit's interpretation of "lascivious exhibition" should stand because it will discourage the Nather Company and like-minded entrepreneurs from pandering to the deviant sexual appetites of child pornography consumers.

C. The Expanded "Backdoor Child Pornography" Market Will Require Additional Child Models and Encourage the Producers of "Backdoor Child Pornography" to Aggressively Recruit Them.

If "backdoor child pornography" were de-criminalized, the dynamics of supply and demand would compel producers of such pornography to recruit new "models." Clearly, if the Third Circuit's opinion is overturned and the opportunities for financial rewards are significant, as they no doubt will be, unscrupulous producers will not hesitate to press additional children into service as "pornographic models." In other words, profit-driven and predatory producers will expand their recruitment activities in order to increase their share of the child pornography market.

This proliferation of distributors and producers will create a class of vulnerable children whose livelihood will be dependent on "acting" in child pornography. The children who enter the world of "backdoor child pornography" will become dependent on the money they earn.[2] They will become financially vulnerable to producers who will then have every reason to force them to perform in videos that are increasingly explicit and outrageous. William Stanmeyer, *The Seduction of Society* 86 (1984); *see* Campagna & Poffenberger, *The Sexual Trafficking in Children, supra,* at 161 ("When legitimate opportunities do not exist, survival for children who lack the support of their family may depend

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[2] According to the United States Department of Health and Human Services, about fifty percent of the "runaway population are victims of some sort of commercial sexual exploitation." Daniel Campagna & Donald L. Poffenberger, *The Sexual Trafficking in Children* 147 (1988). It is natural to anticipate that such children will be lured into the Nather work which, at first, will not demand actual sexual intercourse.

upon entry into a commercial sex market"). For this reason alone, the Third Circuit's ruling should not be reviewed.

D. The Increased Availability of "Backdoor Child Pornography" and the Resulting Sexual Exploitation of Child Models Will Dramatically Increase the Number of Sexual Batteries Committed Against Children.

A flourishing market for any genre of child pornography, including "backdoor child pornography," will lead to a dramatic increase in child sexual molestations. Much of the relevant scientific research on sexual arousal strongly suggests that "acts of child sexual molestation by some. . . adults *are precipitated if one achieves orgasm via fantasies of sex with children.*" Stanmeyer, *supra*, at 9 (emphasis added). Nather-like videotapes will be used by consumers to fantasize about sexual liaisons with children, achieve orgasm, and then act out their fantasies.

It is beyond dispute that society has a compelling interest in preventing the sexual abuse of children. *See Ferber*, 458 U.S. at 757. This Court also observed that, "[i]t is also surely reasonable for the State to conclude that it will decrease production of child pornography if it penalizes those who possess and view the product, thereby decreasing demand." *Osborne*, 495 U.S. at 109-10. Similarly, the Court below did nothing more than permit Section 2256(2)(E) to operate so as to decrease demand for "backdoor child pornography."

E. Exposure to "Backdoor Child Pornography" Will Stimulate a Market for More Explicit Types of Child Pornography.

In a *Special Anniversary Notice* for March 1990, the Nather Company advertises, "a 15 year old doll with braces and a 40 inch bust and ass to match in a swimsuit two sizes too small and some nice *pubic peeks*." Nather Notes, (March 1990), at Government's Exhibit 4 (emphasis added). A February, 1990 *Bulletin* from Nather reads, "[o]ne of the girls has a bikini borrowed from an older sister . . . and when she bends over we all get a startling and *rather astonishing look at her full 14 year old bush*." *See* Nather Notes, (February 1990), at Government's Exhibit 4 (emphasis added). These advertisements clearly indicate that "backdoor child *porn*" consumers will not be content for long to view exhibitions of clothing and genitalia. And entrepreneurs will seek to best one another by providing more "peeks" which will last for longer periods of time. As one prominent observer put it, "as long as there is a market for child sex there will be men and women anxious to meet the demand." Clifford L. Linedecker, *Children in Chains* 297 (1981).

Just as child pornography stimulates and precipitates child sexual abuse, exposure to "backdoor child *porn*" will stimulate a desire for more explicit types of child pornography. Producers will undoubtedly attempt to cater to this desire. If , as Petitioner urges, it is permissible to focus on the covered genitalia of children, the next logical step for producers will be to reduce the size and sufficiency of the covering. Thus, as the market for "backdoor child pornography" grows, so too will a commercial market for more explicit forms of child pornography.

F. Society's Interest in Protecting Children from Sexual Victimization Justifies A Prohibition on Depictions of Partially-Clad Children Engaged in Sexual Activity.

This Court has long held that the interests of society should be balanced against asserted first amendment interests. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 765-66 (1976). In *Virginia Pharmacy*, for instance, the Court held that so-called commercial speech warrants protection against government intrusion only because of the practical benefits that would accrue to society from extending such protection. *Id.* Importantly, this Court employed a balancing test whereby assertions of first amendment interests are weighed against other societal interests when determining whether to categorize expressive conduct and speech as protected or unprotected. *Id; accord Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

The Third Circuit's decision reflects an a appropriate balance. As noted above it is incontrovertible that society has an interest in protecting the welfare of America's youth. *Ferber*, 458 U.S. at 757 (interest is evident "beyond the need for elaboration"); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982) (interest is "compelling"); *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) (development of society dependent on "healthy, well-rounded growth of young people"). Furthermore, this Court has held on numerous occasions that society's interest in protecting children outweighs the first amendment rights of adults when, as here, the two are in clear conflict. *See Ferber*, 458 U.S. at 757; *Prince*, 321 U.S. at 164-65; *Ginsberg v. New York*, 390 U.S. 629, 636 (1968); *F.C.C. v. Pacifica Found.*, 438 U.S. 726 (1978) (protection of children justifies proscription on indecent broadcasts notwithstanding the first

amendment rights of adult viewers and listeners); *Arvin*, 900 F.2d at 1388 (state has "broad legislative authority" to protect children from abuse).

Whatever possible first amendment interest child pornography consumers, like Petitioner, might possess in obtaining and viewing young children provocatively posed in undergarments and bathing suits (and *Amici* cannot discover one), any such interest pales in comparison to society's interest in protecting children from just the sort of sexual exploitation child pornography consumers seek to "enjoy."

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDICES

APPENDIX A

GENERAL OUTLINE OF NATHER TAPES TWO AND THREE

* The numbers listed below reflect the approximate number of minutes and seconds that have elapsed when a given sequence of events has occurred. This is not a complete transcript or listing of the contents of Nather Tapes Two and Three. There are thus other portions of Nather Tapes Two and Three that the Court may consider instructive. Finally, where this outline indicates that voices can be heard, the Court may need to slow the tape and increase the volume.

Tape Two

Timer Count: (minutes: seconds)	**Description:**
1-1:48	Older looking female in suggestive poses; camera focuses on genitalia and pubic area; female is clothed; obviously intended to elicit sexual responses; female responding to off-camera instructions.
4:40, 6:14, 6:54	Obviously early adolescent female; fully clothed; various panty shots, some of which are extended;
8:50	Obviously adolescent female, darker complexion, in short denim skirt; extended panty shots; female says to someone off-camera "I don't know what to do."; off-camera directions were then given followed by another

Timer Count:	Description:
	panty shot; someone off-camera asks to have the knees pushed up closer to the chest after which camera focuses on panties; off-camera voice: "We love it."
11:10	Young female responds to off-camera instructions and pulls strap down over her shoulder and gazes at camera seductively.
14:50, 18:20	Young children receiving directions from off-camera; camera focuses on pubic area; children in sexual poses inappropriate for age.
26:46, 29:35	Two young children - one very young - in tree; children fully clothed; the smallest child squirms and says, "Let me go."; later, smallest child remarks, "My friend did a video and she got five dollars."; panty shots of older child; audio then dies.
33:34	Female in bikini bathing suit (*i.e.*, partially clothed); camera focuses on pubic area; intended to elicit sexual response; girl hangs upside

Timer Count:	Description:
33:34 (cont.)	down; bathing suit top falls and nipple shows - camera focuses on nipple.
39:35, 40:35	Female poses in bathing suit; responding to off-camera directions; numerous close-ups shots of pubic area.
Tape Three	
1:00-3:00	Extended close-up shots of genital area;
38:00	Female in dress; camera attempts to focus on pubic area under dress; voice off-camera instructs female "Pull your panty hose down."; female complies and reveals garter.
55:46	Younger child; camera focuses on child's genital area

APPENDIX B

INTEREST AND DESCRIPTION OF THE AMICI

The **National Law Center for Children and Families** ("National Law Center"), based in the Washington metropolitan area, is a non-profit legal organization dedicated to the protection of children and the preservation of families through the enforcement of existing laws across the nation and the promulgation of new legislation against illegal pornography and sexual exploitation.

Through its legal staff, resource library, and publications, the National Law Center actively participates in assisting courts, prosecutors, investigators, legislators, public officials, researchers, and parents to stop illegal pornography and its concomitant harms of sexual exploitation of children, women, and families.

National Law Center attorneys assist many county, city and civic leaders around the nation in drafting and enacting new legislation concerning obscenity, child pornography, and materials which is harmful to minors. The National Law Center also disseminates information to legislators, law enforcers, public officials, and concerned citizens on pornography, its effects, and the laws which regulate it.

The National Law Center is dedicated to equipping law enforcement personnel with the background information, pleadings, and legal techniques necessary to win the war for our children and families. Presently, the National Law Center is involved in publishing training materials and reference manuals on child sexual exploitation and obscenity. Its legal staff has conducted legal and law enforcement

training for thousands of investigators and prosecutors since 1984.

The National Law Center has participated in numerous Amici Curiae briefs before the Supreme Court, including *Osborne v. Ohio, Alexander v. United States*, and *Jacobson v. United States*.

The National Parent Teacher Association ("PTA") is a section 501 (c) (3) non-profit association and the nation's largest child advocacy organization, comprising over 6.9 million members in the United States, the District of Columbia and Department of Defense Schools in Europe and the Pacific. Founded in 1897, the National PTA has long been involved in assuring the health and protection of children and youth working on such issues as child labor laws, quality children's television, family preservation and juvenile justice. As expressed in a resolution passed on "Obscene and Pornographic Materials," the National PTA supports "legislation and the strengthening of existing laws to preclude the use of children in the creation, production and manufacture of obscene and pornographic material."

The National Coalition Against Pornography ("N-CAP") was founded in 1983 by Dr. Jerry R. Kirk to respond to the devastating impact of illegal obscenity and child pornography on America. N-CAP holds that these materials have a direct relationship to the skyrocketing incidence of rape, sexual violence and child molestation in the United States. Numerous respected studies confirm this opinion.

With members representing over 50 religious groups, denominations, citizen action groups and foundations, N-CAP works to increase public awareness of the harm caused by obscenity, indecency and child pornography and to

implement a number of programs designed to minimize the threat they pose to our society.

These programs include educational/training seminars designed to teach citizens and law enforcement officials how to rid their communities of illegal obscenity and child pornography. Other programs include: victim service development training; legal and law enforcement training on obscenity and child pornography investigations and prosecutions; extensive resource development and distribution, including a wide range of research reports documenting the harm of obscenity, indecency and child pornography; expert testimony for federal and state legislatures that are considering stronger obscenity and child protection laws. N-CAP founder, Dr. Jerry Kirk, provided testimony before both the U.S. House of Representative and the U.S. Senate in support of the Child Protection and Obscenity Enforcement Act of 1988.

Each of N-CAP's programs is active on a national basis, with specific involvement in dozens of local cities at any given time. The fundamental mission and purpose of N-CAP is in protecting children through the elimination of child pornography and obscenity, and the restriction of indecency.

The **"Enough is Enough!"** campaign's mission is to greatly reduce sexual violence and to prevent children, women, men and families from becoming victims by eliminating child pornography and removing hard-core and illegal pornography from the marketplace.

This is an educational program with a plan to mobilize America's women in the battle against the abusive, predatory material that is flooding our nation. Pornography leaves in its wake broken lives and homes, as its chain of abuse victimizes women and their children.

The "Enough is Enough!" campaign includes women from varied backgrounds, professions, religions, non-profit organizations and political affiliations. This is a campaign with a focused target (that which is illegal), and a diverse, growing constituency. It is a unique effort in that moderate, liberal and conservative women are joining together to deal with hate literature which eroticizes inequality and violence, preys upon children and holds a fatal attraction for many men.

Over 30% of the states' First Ladies and numerous other women of influence have become members of the National Committee of Support, and this list is expanding.

The national launch of the "Enough is Enough!" campaign was held November 1992. Since that date, educational meetings and training seminars have been held in cities from Coast to Coast. This campaign is not creating a new organization, rather, initiating a movement. Local action is on the increase as women are empowered to bring about change. They are encouraged, educated and provided with materials to equip them to succeed in their efforts. Women are investing their influence to change the way America thinks about pornography.

The National Center for Missing and Exploited Children (the "Center") is a non–profit, tax–exempt corporation chartered in the District of Columbia in 1984, with goals of decreasing the incidence of crimes against children, effecting positive changes in public law and policy, encouraging an awareness of the significance of all crimes against children, and assisting families and those who seek to protect children. The Center works in cooperation with the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice in coordinating the efforts of law

enforcement, social service agencies, elected officials, judges, prosecutors, educators, and the public and private sectors on child protection issues.

The Center has been funded by the Office of Juvenile Justice and Delinquency Prevention since 1984 to implement tasks under 42 U.S.C. §§5771–5777, including operation of the national toll–free hotline for reports of missing children; operation of the national resource center and clearinghouse for prevention, investigation, prosecution, and treatment of the missing and exploited child case; and assistance to OJJDP in performing its task of coordinating federally funded programs related to missing children. The Center actively assists federal and state law enforcement agencies' efforts to reduce the incidence of sexual exploitation, including passing reports of child pornography received on the hotline to agents of the U.S. Customs Service, U.S. Postal Inspectors Service and local police departments for investigation. The Center provides information on specific federal and state statutes and legislation affecting children, including child pornography laws, state missing children clearinghouse, non–profit organizations, and interested child advocates, and training to professionals.

The **Child Welfare League of America** ("CWLA") is a federation of more than 700 child welfare agencies in the public and voluntary sectors. CWLA is almost three-quarters of a century old and has long been involved in the development of quality program, practice and policy in the field of child welfare, including child protective services. CWLA standards for quality practice address services to abused and neglected children, including children who have been sexually abused. CWLA standards expressly recognize that child sexual abuse includes the exploitation of children and child pornography. CWLA is committed to strong legal protections to ensure that children are not abused through

pornographic exploitation and that children are not placed at heightened risk of sexual abuse and victimization by pedophiles as a result of child pornography.

The National Council of Catholic Women is a nationwide federation of 8000 Catholic women's organizations representing millions of Catholic women. NCCW acts through its affiliated organizations to support, empower and educate all Catholic women in spirituality, leadership and service. NCCW programs respond with Gospel values to the needs of the Church and society in the modern world.

ChildHelp USA has come to the aid of children in distress since 1959. Childhelp is committed to fighting child abuse and neglect with research, treatment, and prevention programs. We operate the National Child Abuse Hotline (1-800-4-A-CHILD and 1-800-2-A-CHILD for the hearing impaired with TDD equipment), America's only 50-state, 24-hour, toll-free crisis intervention program. The Hotline is staffed by trained counselors with a masters degree or higher and has a data bank of over 60,000 service providers across the country. Childhelp also operates two residential treatment facilities for the most severely physically and sexually abused children ages 2 through 12, one in southern California, and one in central Virginia, and recently initiated programs in Knoxville, Tennessee. Our services include therapeutic foster homes, Head Start programs, group programs for teen and adult survivors of abuse, training programs for child care workers and foster parents, and education and advocacy initiatives.

Focus on the Family is a Christian, non–profit organization committed to strengthening the emotional, psychological and spiritual health of children and their families in the United States and throughout the world. Focus on the

Family's President, Dr. James C. Dobson, a renowned child psychologist, served on the Attorney General's Commission on Pornography in 1986.

Focus on the Family has produced two major videos, "A Winnable War" and "Fatal Addiction" and assisted in one book *Pornography: A Human Tragedy* which directly discusses the harms of pornography to children, men, women and families in America. The videos and book have been seen and read by thousands of concerned citizens nationwide. Focus on the Family daily radio broadcasts dealing with family concerns and interests are heard by more than one million people daily over 1400 stations. Its monthly magazine has a circulation of 1.85 million. Focus on the Family regularly receives letters and telephone calls from and counsels with families who have children devastated by pornography, molestation and abuse.

Focus on the Family works to preserve and protect the family, and thus has particular knowledge about the impact of child pornography that will be helpful to the Court in this case.

The **Family Violence & Sexual Assault Institute** (FVSAI) was established in 1984 by Robert Geffner, Ph.D. The FVSAI became an independent, nonprofit corporation (501[c][3]) in 1991. The first Family Violence bulletin (FVB), now the Family Violence & Sexual Assault Bulletin (FVSAB), was published in 1985. The FVSAI is a national resource center and maintains an international clearinghouse of references and unpublished papers concerning aspects of family violence and sexual abuse, reviews information and materials, and then disseminates the information in the FVSAB, which is published quarterly and distributed internationally. The overall purposes of these two components of the FVSAI is to improve networking among

researchers, practitioners, and agencies, and to disseminate information.

In addition, the FVSAI, in cooperation with crisis centers, agencies, and counseling clinics, is involved in developing treatment programs for spouse/partner abuse and sexual abuse. We have also published two treatment manuals and four bibliographies, and are working on others. The focus of our program's research has been on victims and offenders of spouse/partner abuse and of incest.

The final components of the FVSAI involve training and consultation. We conduct seminars and workshops nationwide, as well as educational programs and conferences. We also serve as consultants to various organizations and agencies, providing program evaluation, research, and technical assistance.

Family Research Council, Inc. is a voice for the pro-family movement in Washington, D.C. and provides policy analysis, legislative assistance and research for pro-family organizations. It also seeks to educate legislators on issues which affect American families. Its research, publications and films on the impact of pornography have been distributed to over 400,000 scholars, organizations and citizens.

The issues in this case directly affect the physical, psychological and emotional well being of children, parents and communities throughout the United States. Family Research Council, Inc. works through legislative assistance and public policy to preserve and protect the family and thus has particular knowledge about the harms of child pornography that will be helpful to the Court in this case.

Help Us Regain The Children, a national legal research center and lobbying entity, has had the opportunity to query

child pornography and child sexual abuse investigators. We have learned of the inextricable tie between pornography and pedophilia. We are chagrined to have uncovered state and partially federally sponsored child welfare agencies, such as the Ohel Children's Home and Family Services, to have actively furnished children under their auspices for a well run child pornography/child pedophilia ring, operated by a Rabbi Avrohom Mondrowitz, who fled to the State of Israel immediately after his indictment in 1987. If the social standards were lowered to condone lascivious poses that involve clothed children, we fear that countless children will become enmeshed in this heinous operation, that can possibly and most ironically be supported by our taxpayer dollar if additional child welfare agencies were to follow in the path of the OHEL agency in Brooklyn, New York.

Child pornography is an ever expanding profiteering enterprise which claims numerous victims. The lowering of our social standards by raising the threshold for what constitutes child pornography (viz., nudity) portends a dangerous consequence to our children in our American society. Not only would our children be subject to execrable activities and opprobrious conduct of posing in a prurient fashion, but such detestable behavior has the propensity to lead to or to inhere acts of child sexual abuse.

The Free Congress Research & Education Foundation is a non-profit , non-partisan public policy research institute founded in 1978. Its priorities include the separation of powers, judicial restraint, and traditional family and social values. Amicus believes this case directly implicates all three of these fundamental concerns. The separation of powers means that Congress enacts statutes like the one in this case and the Department of Justice is to enforce, rather than re-write, those statutes. Judicial restraint requires fidelity to the statutory meaning intended by Congress over

that preferred by the Department of Justice. Traditional values means protecting children from abuse, as Congress sought to do in this statute.

Coalitions for America is a non-profit lobbying organization whose priorities include the protection of children from abuse. To that end, amicus seeks to promote protective, yet constitutionally permissible, legislation. Amicus urges this court to apply traditional rules of statutory construction to preserve the intended meaning of the statute at issue.

Save America's Youth , Inc., is a non-profit educational and advocacy organization concerned with the problems facing young people in America today. Amicus is affiliated with Freedom Village, USA, a successful long-term rehabilitation facility for troubled teenagers. Through that association, amicus knows first-hand the permanent and tragic effects of child abuse, including the sexual abuse that is child pornography. Amicus believes the statute at issue in this case can help combat this evil only if the protective legislative intent behind it is upheld.

Citizens Against Pornography is a non-profit organization with the purpose of educating and informing the public about the harmful effects of pornography, and promoting and encouraging enforcement and prosecution of obscenity and child pornography laws.

We believe that pornography is not a victimless crime. The dehumanization, assault on human dignity, and violence that is promoted through pornography destroys the very fabric of society.

Our belief is that our children are our greatest natural resource and we must do everything to protect them from

being exploited and abused. Child pornography is a most heinous crime. The 1984 Child Protection Act has been used for the past ten years to successfully prosecute pornographers. The intent and purpose of the Act must not be discarded because of a political agenda. Our children's lives and innocence must be protected.

Because of the betrayal of our Justice Department and endangerment of our children, we wish to be on record stating our interest and support for this brief.

Voices for Victims is a grassroots citizen action committee dedicated to aiding victims of violent crimes in obtaining justice. Far, far too often the rights of innocent people are ignored as juries and judges enter a sentence or a plea agreement in today's courts.

Voices for Victims are themselves crime victims who are interested in bettering the system, changing laws and molding the criminal justice system into being more responsive to the rights of crime victims regardless of race, creed, class, sex or age.

Voices for Victims advocates have been present at the time a violent criminal is sentenced in an effort to remind the judge of the victim and their rights in each case. We have aided in fund raising efforts for crime victim compensation. We have successfully educated the Virginia General Assembly on various laws and amendments relative to crime victims and their rights. We have specifically engaged in statewide educational efforts and legal reform efforts on behalf of victims of sexual assault, child sexual abuse and domestic violence.

Every five minutes in America there is a rape, every 22 seconds a violent crime occurs. Every violent crime leaves

in its wake one or more victims. Currently in the USA, there are more victims of crime than victims of heart attacks or cancer.

The Rabbinical Alliance of America, IGUD Horabbonim, is a professional rabbinical organization constituted of duly ordained Orthodox Rabbis occupying pulpits in the United States, Canada and throughout the world and/or serving on faculties of institutions of higher Jewish learning.

The Rabbinical Alliance of America, IGUD Horabbonim has been dedicated for the past 50 years to furthering widespread study of Torah and the fostering of fuller observance of strict Torah Judaism by meeting and providing the religious, ethical and moral needs and activities of our brethren on the national and international scene.

Christian Legal Defense and Education Foundation is a non-profit organization that represents churches and individuals across the nation. CLD provides legal counsel, Washington representation, and researching services to their supporters. The organization has filed many amicus briefs in the past in cases that directly address a concern that Christians share across America share. Most recently CLD filed a brief before the Supreme Court in Alexander v. U.S. a case where it was determined that the RICO laws could be used against pornographers.

Knox v. U.S. is of particular interest to CLD because it deals with pornography, children and the weakening of a long-standing statute. Christians in America want to protect children and punish those who deal wickedly with them. Our supporting churches have pledged their prayers, time, and money to battle the reinterpretation of the federal Child Protection Act. On behalf of all of our supporters, CLD asks

this court to maintain their previous position in this case and let the correct interpretation of the statute stand as it has for the last nine years.

The **Christian Life Commission/Southern Baptist Convention** is the nation's largest Protestant denomination, with over 15.4 million members in nearly 38,400 local churches. The Christian Life Commission is the public policy agency of the Convention, assigned to address moral and ethical issues, including the issue of pornography and obscenity. Amicus produces publications and seminars to educate Southern Baptist about public policy issues, to encourage responsible Christian citizenship as well as personal biblical decision-making in daily Christian life. Amicus also seeks to bring biblical principles and Southern Baptist convictions to bear before courts, legislatures and policy making bodies. Amicus frequently files briefs as amicus curiae in cases important to family and morality, such as this case.

Traditional Values Coalition (TVC) is a grassroots lobby and education group representing more than 31,000 churches nationally. TVC is used as a resource on public policy issues for its member churches. The churches serve as a resource to the community with various ministries to people grappling with pornography addiction and victims of pornography-related sexual abuse.

Traditional Values Coalition has taken a leadership role on issues relating to pornography since 1985. TVC monitors, evaluates and affects legislation, court actions, and cultural trends to take an informed and aggressive stand against pornography. TVC actively lobbied Congress in support of the Pornography Victims Compensation Act of 1991.

In the California legislature TVC successfully lobbied for a bill that instituted most of the Miller Standard for the state of California, allowing the state to maintain a standard of decency by which all works of pornography are judged. TVC has also promoted other anti-pornography bills including, the News Rack Bill (prohibiting the sale of pornography in vending machines except in adult only areas), the Dial-A-Porn Bill (preventing children from accessing phone pornography without a credit card) and a bill that would make it a crime for parents to expose their children to pornographic material.

TVC's founder and chairman, Rev. Louis P. Sheldon, has held and addressed Minister's Conferences on the impact of pornography on America's culture. Rev. Sheldon has also debated the issue on numerous television and radio programs.

TVC is headquartered in Anaheim, California, and maintains a Washington, D.C. government affairs and media office on Capitol Hill, as well as several regional offices around the country.

Christian Action Network is a 501(c)(4) lobbying organization dedicated to encouraging, supporting, and perpetuating traditional American values. As such, and on behalf of its 100,000 supporters, the Christian Action Network works to ensure that the traditional family and its fundamental liberties are protected against government encroachment.

Justice for Children ("JFC") is a national child advocacy organization headquartered in Houston, Texas. JFC works for the child who is abused, abandoned, neglected or simply lost in the child welfare, family court, and/or criminal justice systems. Unlike other child advocacy organizations which have been formed to prevent child abuse

through education and social programs, JFC focuses on protecting the abused child once an initial report has been made to the authorities. We work and speak for those who are too young or too frightened to speak for themselves.

Child Protection Lobby, Inc. is a California non-profit 501(c)(4) corporation based in suburban Washington, D.C. Child Protection Lobby is chaired by Kathleen M. Sheldon, a survivor of child sexual abuse and victim of child pornography. Over a number of years, beginning at age seven, Mrs. Sheldon was raped and forced to perform a variety of sexual acts with others, on camera, for the purpose of producing child pornography. Mrs. Sheldon is a living, "flesh and blood" example of the direct casual link between child pornography and child sexual abuse.

As an organization whose sole purpose is to ensure that laws exist to protect children from horrors like child pornography and child sexual abuse, Child Protection Lobby believes that it is essential that all such violations of both the letter and the spirit of the law be vigorously enforced and prosecuted and that such laws be interpreted as inclusively as possible, as was the Congressional intent.

The **Lutheran Church--Missouri Synod (LCMS)** is a 2.6 million-member Christian denomination with more than 6,000 congregations and more than 22,000 professional church workers nationwide. It is the country's ninth largest church body and supports the largest Protestant elementary school system in the United States. The LCMS has its national offices in St. Louis, Mo., and has 33 regional and two non-geographic district offices across the country.

The denomination's highest legislative assembly, its national convention, in 1986 formally resolved to intensify efforts to curb pornography, violence, obscenity and

indecency. A statement on pornography adopted with that resolution states in part: "immoral behavior is preceded by immoral thoughts and a perverted will. Pornography and its use must be condemned not only for the sexual abuse which may ensue, but also for the fantasies in which those who read and view it indulge themselves." It notes that "pornography seeks to arouse sexual desire that is directed not toward the good of another within the fellowship of the marital union, but toward self-gratification--a mark of the unredeemed life (I Thessalonians 4:5)." The statement adds that the sexual deviancy which is accepted as normal by pornography is among those social evils that "rend the fabric of society and make an agony of the common life that should in God's intent have been a blessing to mankind."

Child pornography, at issue in this present case, raises additional concerns, because it is a form of child abuse. The 1989 LCMS convention, which reaffirmed the 1986 resolution, also resolved to encourage support for prevention of child abuse, noting that "child abuse is cyclic, often perpetuating godless life-styles in victims, including abuse of their own children, crime, drug and alcohol abuse, and the inability to form relationships..."

Members of LCMS congregations are increasingly concerned for the men, women and children of all ages who are victimized by pornography and about the effects of pornography, violence, obscenity and indecency on our children, families, communities and society. It is in response to such concerns that the LCMS joins this brief in support of the respondent.

Women Against Pornography (WAP), founded in 1979, is a New York City-based feminist organization with a national membership. WAP considers pornography to be a practice of sexual discrimination, exploitation, and abuse that

undermines the status of women and legitimizes violence against women and children. WAP publishes a newsletter, gives slide presentations and lectures to college and community groups, and organizes protests of pornography and pornography-influenced media. While WAP's primary goals are public education and consciousness-raising, the organization supports legislation, national and international, that identifies pornography as a violation of women's civil and human rights and holds pornographers liable for injuries they inflict on women and children.

Eagle Forum is a pro-family organization dedicated to building a better educated, safer, and stronger America. As a pro-family organization, the issue of child pornography is of great concern to Eagle Forum, especially child pornography. The attempt by the Department of Justice to redefine current child pornography laws greatly distresses our membership of over 80,000 men and women. The new definition given by Justice shifts responsibility to the innocent children and away from those who produce the child pornography.

National Alliance for Family Court Justice is a grass roots coalition of victim support groups organized for the purpose of seeking relief from serious systemic failures in all phases of the family court system. The coalition is composed of independent support groups in 18 states whose director and organizer is Elisabeth Richards of Annandale, Virginia. She and others in the support groups have extensive pro se litigating experience in matters related to child abuse and custody battles. Ms. Richards has been actively seeking political support for administrative intervention of serious cases being mishandled by social service agencies.

Group members have encountered a pattern of deliberate indifference by judges, social workers and attorneys. This conduct obstructs causes of action and/or evidence in matters where physical, sexual and emotional

child abuse is a factor. Some court authorities are so hostile toward the issues and evidence of the abused child and the traumatized protecting parent, that they engage in obstructionist court fraud such as labeling medical documentation as evidence of lying, labeling children's statements and physical injuries as evidence of parental brainwashing. Due process violations such as ex-parte custody switches are also a problem. Group members who have persisted in their causes have also experienced vindictive court reprisals such as jailings and punitive financial penalties on frivolous grounds. The perpetrator is usually actively protected, supported and encouraged by these malfeasant court officials whose focus seems more on exploiting the situation than making objective determinations or findings suitable relief from wrongdoing.

Most supplicants lose custody of their children to the alleged abuser with visiting rights either drastically reduced or completely taken away. This devastating experience with the courts has made many of the victimized parents dysfunctional. Individual groups have been working together for self-help purposes, several made pro se appeals to their state Supreme Courts and others have attracted political supporters but unfortunately, few have achieved significant case relief.

Because of the extreme bias against child abuse exhibited by many court professionals, National Alliance for Family Court Justice supports stronger precedents for taking action against child abusers of all types.

Christian Coalition is a grassroots coalition of Evangelicals, pro-family Catholics and Jews formed to encourage government and the media to be responsive to our concerns. We are an issue-oriented organization, designed to mobilize and train people of faith for effective political action. Our five-fold mission is to 1) represent people of faith before local councils, state legislatures and Congress; 2)

speak out in the public arena and in the media; 3) train leaders for effective social and political action; 4) inform people about timely issues and pending legislation; 5) protest anti-Christian bias and defend the legal rights of people of faith.

Christian Coalition promotes traditional values through a network of state affiliates and county chapters. Our broad-based membership monitors legislative initiatives of concern to our membership, takes concerted action to further our mutual interests, and interacts with state and local officials.

Child pornography directly affects the physical and psychological well being of our children. Christian Coalition's stated purpose is to reverse the moral decline in American families and it condemns the weakening of laws designed to protect the children who are America's future.

The **National Center for Redress of Incest and Sexual Abuse** ("Center for Redress") is a foundation established to address the legal needs of adult survivors and child victims of sexual abuse. Located in Washington, D.C., its purpose is to build a comprehensive network of attorneys across the country who are dedicated to furthering the rights of survivors under the law; to develop educational outreach programs, focusing on members of the judicial and legislative branches of government; to facilitate a national grassroots effort to support projects in progress on the issue of sexual abuse and incest; and to litigate test cases under civil law related to childhood sexual victimization. The Center for Redress believes that the connection between childhood sexual abuse and child pornography has been established beyond doubt, and supports the enforcement of laws aimed at preventing the production and distribution of child pornography, such as the law at issue in this case.

The American Coalition for Abuse Awareness ("ACAA") is an ad hoc coalition of individuals and groups committed to resolving the issue of sexual abuse of children. The ACAA has been founded to seek enactment of federal and state legislation establishing the right of a child to be free from sexual victimization, and appropriate protections to assure that such victimization does not occur; enactment of federal and state legislation extending or eliminating statutes of limitations relating to civil lawsuits brought by adult survivors of childhood sexual abuse; formation of a broad based Coalition to support such legislation; development of public and media awareness of the issue of sexual abuse of children; establishment of a comprehensive network of legal professionals nationwide dedicated to advancing the legal rights of victims of childhood sexual abuse through the justice system; development of educational outreach programs for members of the judicial and legislative branches of government; establishment of a national body to make policy recommendations on issues related to childhood sexual abuse, protection of children, and adult survivors of abuse.

VOICES In Action, Inc. is an international organization of survivors and supporters of survivors of incest and child sexual abuse that is dedicated, among other things, to the prevention of incest and child sexual abuse in our society. VOICES is a nonprofit organization headquartered in Chicago, and is the largest membership organization of incest and child sexual abuse survivors in the United States. VOICES' members believe that child sexual abuse is not limited to intercourse, but includes other forms of sexual violation, such as voyeurism, pornography or exhibitionism.

VOICES is strongly committed to ending the traffic of child pornography in all its forms. VOICES therefore urges in the strongest possible terms that this Court affirm Petitioner's conviction. The "Nather Tapes" and the

associated "Nather Notes" clearly constitute a form of child pornography that is itself a form of sexual abuse perpetrated upon the children who appear in the tapes. Worse, the "voice overs" on these tapes and the associated "Nather Notes" clearly indicate that these child "models" are at high risk to be drawn further into the pornography trade and subjected to still other acts of sexual abuse.

The **Ending Men's Violence Network** (EMV-Net) is a collective of grassroots efforts by men and men's organizations to end men's violence. We are made up of groups primarily in the United States and Canada who are working with men on ending woman abuse, rape, sexual harassment and pornography and prostitution. Included in our collective are counseling programs working with men who batter and/or men who sexually abuse; educational groups for men in communities, highschools, and colleges; activist groups; fundraising organizations; and more.

Unlike most men's organizations, the EMV-Net maintains strict and clear lines of accountability to the feminist leadership of the overall ending men's violence movement, as well as to the victim-survivors of men's violence. While most of us work most directly with men, either as perpetrators or in the general population, we recognize that our work has direct ramifications for women, children and other who are victimized by men's violence.

Programs offered by the EMV-Net include a quarterly newsletter, legislation monitoring, frequent action alerts, support services for local efforts to respond to and end men's violence, educational programs, and professional training.